IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.3935 OF 1989

Central Bank of India .. Plaintiffs.
Versus
Ratansingh Hakamsingh Dher & Ors. .. Defendants.

Mr.Amit Jajoo i/b.N.C.Dalal for plaintiffs.

CORAM : A.M.KHANWILKAR, J.
DATE : 8th October, 2007.

P.C.:

1. None appears for the Defendants though served. No written statement has been filed by the Defendants to controvert and assert the claim of the plaintiffs, whereas the plaintiffs have filed affidavit of evidence duly sworn by Vinod M.Uikey, authorised officer of the plaintiffs Bank dated 28th September, 2007. Besides, the plaintiffs are relying on the compilation of original documents to establish their suit claim. In the circumstances, this Court has no option but to proceed further in the matter in exercise of powers under Order 8 Rule 10 of the Code of Civil Procedure.

2. The plaintiffs extended Term Loan facility to the Defendant No.1. The Defendant No.1 has executed the Agreement dated 19th February, 1982 to avail of such facility on terms and conditions stated therein. The Defendant No.1 also executed Term Loan Agreement for

hypothecation of vehicle dated 19th February, 1982, hypothecating Ashok Layland Truck bearing No.MWT 5717, Chassis No.ALE 141631, Engine No.ALI 126314.

3. The Defendant Nos.2 and 3 stood guarantors for the liability of Defendant No.1 by executing Deed of Guarantee of the same date that is 19th February, 1982. The plaintiffs assert that the Defendant No.1 availed of Term Loan facility. The Defendant No.1 was liable to pay a sum of Rs.1,24,800.05 as on 28th November, 1988. Inspite of repeated demands, the Defendant No.1 did not pay the amount. Even the guarantors did not come forward to pay the said outstanding amount. Eventually, the plaintiffs were left with no option but to institute the present suit for the following reliefs.

> "(a) That the Defendants jointly and severally be ordered and decreed to pay to the Plaintiffs the sum of Rs.1,24,800.05 P. with interest at 12.5% p.a. from the date of filing of the suit till payment or realisation.
>
> (b) For a declaration that the said Truck bearing No.MWT 5717, Chassis No.ALE 141631, Engine No.ALI 126314 is validly hypothecated to the

Plaintiff for payment of its dues.

(c) That the said hypothecated Truck be sold by and under the orders and directions of this Hon'ble Court and the net sale proceeds thereof be applied in or towards satisfaction of the Plaintiffs' claim.

(d) That pending the hearing and final disposal of the suit, the Court Receiver, High Court, Bombay be appointed as the Receiver of the said Truck bearing No.MWT 5717, Chassis No.ALE 141631, Engine No.ALI 126314 with all powers under Order 40 Rule 1 of the Code of Civil Procedure, 1908, including the power to sell the said truck either by public auction or by private treaty and the Court Receiver be authorised and directed to handover to the Plaintiffs the net sale proceeds thereof.

(e) That pending the hearing and final disposal of the suit, the Defendants, their servants and agents be restrained by an Order and Injunction of this Hon'ble Court from alienating, encumbering, transferring, dealing with, disposing

of or parting with the said truck bearing No.MWT 5717, Chassis No.ALE 141631 and Engine No.ALI 126314.

(f) For ad-interim relief in terms of prayers (d) and (e) above.

(g) For costs of the suit.

(h) For such further and other reliefs as the nature and circumstances of the case may require."

4. As mentioned earlier, the plaintiffs have filed affidavit of evidence in lieu of examination-in-chief sworn by Vinod M.Uikey dated 28th September, 2007, which reiterates the facts and events stated in the plaint. Besides the oral evidence, the plaintiffs rely on the following documentary evidence :-

i) Original Deed of Guarantee executed by the Defendant Nos.2 and 3 in favour of the Plaintiff dated 17th January, 1985. Exhibit "A" to the plaint.

ii) Original Term Loan Agreement executed by

the Defendant No.1 dated 16th January, 1988. Exhibit "B" to the plaint.

iii) Copy of the letter of Acknowledgement executed by Defendant No.1 in favour of the Plaintiff dated 16th January, 1988. Exhibit "C" to the plaint.

iv) Original letter addressed by the Defendant No.1 to the Plaintiff dated 16th January, 1988. Exhibit "D" to the plaint.

v) Original letter addressed by the Defendant No.1 to the Plaintiffs dated 16th January, 1988. Exhibit "E" to the plaint.

vi) Original letter addressed by the Defendant No.1 to the Plaintiffs dated 22nd January, 1988. Exhibit "F" to the plaint.

vii) Original letter addressed by the Defendant No.1 to the Plaintiffs dated 10th August, 1988. Exhibit "G" to the plaint.

viii) Original letter addressed by the Defendant

No.1 to the Plaintiffs (undated letter). Exhibit "H" to the plaint.

ix) Copy of the Plaintiffs' Advocate's letter addressed to the Defendants dated 24th July, 1989. Exhibit "I" to the plaint.

x) Particulars of claim.

5. The plaintiffs have produced original Agreements, which have been executed by each of the defendants as also the statement of account maintained by the plaintiffs in the ordinary course of business. On the date of filing of the suit, the plaintiffs were entitled to recover the sum of Rs.1,24,800.05 P. from the defendants. That position is established not only from the oral evidence but also the documentary evidence produced by the plaintiffs.

6. The next question is whether the plaintiffs are entitled for interest @ 12.5% per annum as claimed that is agreed rate of interest. The original Term Loan Agreement as well as the Deed of Guarantee clearly records that the Defendants will be liable to pay interest @12.5% per annum for the default period that is the agreed rate of interest. The transaction in question is undoubtedly a

commercial transaction, the plaintiffs are entitled to recover interest on the principal amount @12.5% per annum.

7. Accordingly, I proceed to pass a decree in exercise of powers under Order 8 Rule 10 of the Code of Civil Procedure. The Suit is accordingly decreed in terms of prayer clauses (a) to (c) with costs which read thus :-

> "(a) That the Defendants jointly and severally be ordered and decreed to pay to the Plaintiffs the sum of Rs.1,24,800.05 P. with interest at 12.5% p.a. from the date of filing of the suit till payment or realisation.
>
> (b) For a declaration that the said Truck bearing No.MWT 5717, Chassis No.ALE 141631, Engine No.ALI 126314 is validly hypothecated to the Plaintiff for payment of its dues.
>
> (c) That the said hypothecated Truck be sold by and under the orders and directions of this Hon’ble Court and the net sale proceeds thereof be applied in or towards satisfaction of the Plaintiffs’ claim."

8. Decree be drawn up on the above basis. Certified copy expedited.

(A.M.Khanwilkar, J.)